1z Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

Governor had only a general power of co-ordination and discipline. These departments, directed from Istanbul, included the administration of justice: a field in which Turkish law had by 1900 developed far beyond its Shara' origins. The composite and ill-coded civil Majalla, a mass of *ad hoc* legislation, and a body of French commercial law had been adopted. The resulting codes were not only imperfectly drafted and full of anomalies, but too often quite unsuited to 'Iraqi needs. The Courts which administered them represented a comprehensive and not ill-considered system spoiled by the delays and abuses in its practical working, by its exclusive use of a foreign language, and by the underpaying of the judges. The privileged position of foreigners, protected by their outdated and resented Capitulations, was assured by special arrangements in both civil and criminal matters.

Abundant work for the Courts was provided by the department of Land Registry, or Tapu. It had been inaugurated in 'Iraq by Midhat Pasha as a land-settlement and stabilizing measure; but in unsurveyed agricultural lands, largely in immemorial tribal possession and far from conforming to the official view that 'unalienated State lands' were at Government's free disposal, the Tapu system could do little save create new disputes, bestow rights on parties powerless to exercise them, and destroy the best elements in the shaykh–tribesman relationship. The immense practical difficulties of land settlement in 'Iraq were unrealized, and the whole essential background of cadastral survey and social control was lacking.

In the field of medicine and quarantine the standard of Turkish doctors (rarely Turkish by race) was low, their assistants and inspectors were untrained, their equipment was inadequate. The medical services, accustomed to rely on mission hospitals and dispensaries, were scanty in the towns and non-existent outside. Educational services made a slightly better showing, though standards were everywhere below those of the foreign or foreign-inspired mission schools. Free primary schools, well organized on paper, existed at most towns, and secondary also at the larger. Industrial schools had been founded at Baghdad and Baṣra, and higher theological learning was available. The military educational system was distinct. The sons of civil notables and high officials went to Istanbul to complete their Turkish education, and a few sons of the greater shaykhs to the Tribal College. The teaching profession was ill reputed and unpopular, its methods primitive.

These do not conclude the list of the 'imperial' departments. The Public Debt administration, handling selected revenues on behalf of the European creditors of the Porte: the local offices of the Régie Co-intéressée who held the monopoly for the manufacture

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

was H. F. Forbes, I.C.S., in 1920–1, B. H. Bell in 1921–2, and thereafter G. Alexander until 1934. Davidson on transfer to the staff of the High Commission handed the Adviserships of Justice in 1922 to E. M. Drower, who held it till 1946. The Turkish Majalla, Code of Civil Procedure, and Commercial and Maritime Codes remained in force. Criminal justice was in the hands of single magistrates with first, second or third-class powers, and Courts of Sessions which possessed also appeal jurisdiction, while limited magisterial powers were still possessed by certain administrative officials and municipal bodies. The Tribal Disputes Regulations remained in force, beloved of administrative officials but disliked by the legally-minded. The rights of foreigners, preferential though no longer Capitulatory, were defined in the Judicial Agreement. Unsuccessful efforts were made to form a Bar Association for the body of excitable, ill-disciplined advocates, into whose numbers the Law School poured annual recruits.

The forces of law and order were at this period four in number: the 'Iraq Army, British forces of ground and air, the 'Iraq Levies, and the Police. The 'Iraq Army, based on voluntary recruitment from 1921 onwards and within its limits conceived on the most modern lines, by 1925 rose in strength to 7,500 men. It remained constant at about this establishment for the next eight years. There were six infantry battalions, three cavalry regiments, two mountain and one field battery, and all necessary services. The officers had almost all served in the Turkish Army, but in the lower ranks at least were adaptable to new standards. Units of the Army took part in many small operations against tribal enemies and saw more serious service in Kurdistan, not without losses. Great attention was paid to its Training Centre and its Royal Military College. The British Military Mission was re-formed and increased in 1925.[1] By this date the Army's rôle of successor, for all ground purposes, of the British forces was clearly indicated. The latter were progressively reduced, actually to vanishing point in 1929. In March 1921 there were 33 infantry battalions, 6 cavalry regiments, 16 batteries, and Sapper and armoured-car companies: these by 1926 were reduced to three battalions, two by 1927, one by 1928, and vanished entirely in 1929. The British military element, so characteristic of 'Iraq under the Occupation, was thenceforward to be absent until 1941. The Royal Air Force—under successive commanders of high rank, nearly all of whom were

[1] Successive heads of the British Military Mission, and Advisers to the Ministry of Defence, were: Colonel P. Joyce, 1921; Major-General A. C. Daly, 1925; Major-General G. G. Loch, 1928; Major-General H. Rowan-Robinson, 1931; Major-General C. J. Bruce-Hay, 1934; Major-General H. W. M. Watson, 1937; Major-General G. G. Waterhouse, 1938; Major-General D. G. Bromilow, 1941; Major-General J. M. L. Renton, 1944.

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

619 But the Euphrates ferment could not be so easily cooled. If one
645 major faction was satisfied by the advent to power of the Ikhā, its
668 rivals were with reason suspicious of a Ministry whose opponents they had recently supported. Yasin Pasha's repudiation of all party preferences, his promise of Deputies' seats to ex-opponents and his dissolution of the Ikhā Party itself were unconvincing. The attempted use of Kashif al-Ghaṭā as pacifier was not successful. The 'Alim was simultaneously approached by the group hostile to 'Abd al-Waḥid, but was unwilling to offend his former friends and temporized. But his completed list of Shi'i demands, not in itself immoderate, created indignation in Sunni circles of Baghdad; and other Shi'i spiritual influence, added to the movements of anti-Ikhā politicians in Baghdad, was not absent from the incitements to further tribal trouble-making which were visible as early as April, and bore fruit in the later spring and summer of 1935.

669 The first outbreak came in May from the Bani Zurayj near
619 Rumaytha, a traditional storm-centre. Here, with a background of vengeful land disputes and the encouragements of absentee politicians, the arrest of a minor 'Alim led to a rising. The railway line was cut, a Government office seized, appeals for help broadcast. But the Government this time acted quickly. Forces under General Bakr Ṣidqi bombed and dispersed the rebels, captured Shaykh Khawwam al-Ḥajj 'Abbas their leader, and entered Rumaytha. The expected allies from lower Euphrates tribes failed to rally to the rebels' support. But the movement had spread southwards, tribesmen in the Suq al-Shuyukh area were 'out', had cut the line at Tall al-Laḥm and Ur, burnt Government records at 'Ukayka, and fought successfully with the police. The history of the Bani Zurayj and Rumaytha was repeated. Bakr Ṣidqi's troops and aircraft, moving with ruthless speed and spirit, by-passed broken communications (which the frightened tribesmen hastened to repair) and entered Samawa and then Suq. Scores of arrests
[687] were made. Nine death sentences and some dozens of imprisonments were pronounced by courts martial[1]—with little discrimination, it was said, between innocent and guilty. The success of the campaign did much, but not enough and not permanently, to correct the subversive and centrifugal tribal spirit which, with sad unwisdom, the politicians of Baghdad had themselves encouraged.

In other tribal unrest of 1935 and 1936 fear of the application of conscription was a major element. Among the Yazidis, who had passed three quieter years, Government saw fit to make no con-

[671] [1] Recourse to martial law, legalized by Ordinance in 1935, was frequent in the period now opening and led to scores or hundreds of rough-and-ready trials by courts martial.

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

744 The Health Department, criticized for an unprecedented malaria epidemic in Baghdad in 1936, seemed to call for reform and for a 36 broader activity which should include the rural and backward 631 areas as well as the towns. The period was one of many municipal 466 improvements and considerable building and town-planning. 554 Electric power and light, widened streets, a modern water-supply, improved conservancy, municipal gardens—these were now features of all but the humblest *baladiyas*. It was, indeed, the policy of Yasin Pasha to encourage the devolution of the local services into municipal hands, and funds were provided accordingly; later Prime Ministers followed his example. The passage into law of a Labour Code in 1936 reflected pressure on Government to insist, at least ostensibly, on something of modern standards in the treatment of industrial workers; but the Code had for the moment little practical effect. A law of 1935 prohibiting non-'Iraqis from practising certain trades seemed to threaten domiciled Indians, and was suitably amended and scarcely enforced. The 1936 law abolishing, under severe penalties, the use of Turkish titles—Pasha, Bey, and Effendi—in favour of the simple Arabic 'Sayid'—Master, or Mr.—was widely ignored among the general public and by Europeans, as indeed by Ministers themselves and by others in authority.

671 The application of the National Service Law, passed in 1934, 184 devolved upon the Hashimi Ministry and could not but be imper- 702 fect. Wide tribal areas were in practice exempt; the accessible and the weak were exploited. Armed resistance, as has been seen, was not infrequent, desertion was common, and the payment of a low exemption fee to escape service was habitual. The machinery of recruitment was inefficient, census lists inaccurate, and the resulting military forces habitually below their authorized strength. 701 Nevertheless, the 'Iraq Army, with its British Military Mission constantly in support, improved its training and equipment and its housing facilities, and was highly favoured by King Ghazi. Increasing from some 11,500 men in 1933 to double that number by the end of 1936, it was now organized in two divisions and, territorially, into four districts. Its armament and capacity were sufficient for internal purposes, its corps of officers good in the lower, indifferent or poor in the higher ranks. Unused on any operations in 1934—a unique event—the Army was busy with tribal suppression in the two years following, and was shortly to 707 emerge as the arbiter of 'Iraq's political destinies. The Royal 'Iraq Air Force grew from a few machines to three formed squadrons.

701 The small surviving force of 'Iraq Levies, some 1,500 strong, was now specialized to aerodrome-guard duties under R.A.F. Command, and the Assyrian monopoly therein had been broken

677 ... recruitment of Kurdish and Arab companies.

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

563 has been said elsewhere to show the nature of their problems. Their own restlessness in a minority status, their antipathy to an Arab Government, their uneasy leadership by feudal Aghās or 'intellectual' townsmen towards a non-'Iraqi nationalism—or Communism—indicated that these problems remained unsolved. Still deeply disunited, the Kurds had shown no signs of evolving into a contented or strengthening element in the State; and the wider Kurdish question of their broad Turco-Perso-'Iraqi homeland had not been—probably never would be—answered on lines acceptable to the spokesmen of that race.

671 692 Throughout the territory a fair level of security and justice—a level doubtless far higher than any seen in 'Iraq for centuries—had been achieved and prevailed in all or almost all regions. The Courts had been developed in the last five years by the institution of a Court of First Instance at every liwā headquarters and by the establishment of Appeal Courts at Baṣra, Mosul, Ḥilla, Ba'quba, and Kirkuk as well as at the capital. The Tribal Disputes Regulations remained in force, with recent amendments; a new Civil Code was passed into law in 1951 to take effect two years later, thus superseding the Majalla; a new Commercial Code was already in force. The Criminal Code drawn up in 1918 retained its authority. As a whole, the judicial system, Codes of Law, Courts, Judges, and Magistracy, gave every appearance of adequacy to 'Iraq's present needs, a goal reached by thirty years of well-directed effort. The last British Judge, Sir J. Pritchard, left 'Iraq in 1951.

625 697 The Police, numbering nearly 20,000 of all ranks, included a mobile force of nearly 6,000 and mechanized sections. They had regained the standards temporarily lost in 1948 and were felt to be, with occasional lapses, a creditable and efficient body. The force was adequately organized, trained, and specialized for its multifarious duties in city, countryside, mountain, and desert. The level of its officers was predominantly high and sometimes admirable. The administration of the prisons was on modern and constructive lines, a world of contrast from the filth and medieval corruption of Hamidian times.

701 The Army, which in its lifetime of thirty years had had its good days and its bad, contained some good and some indifferent material. Its leadership was likely to be excellent in the smaller units, doubtful in the larger, and its fighting prowess would always be in strict proportion to its leadership. Its organization[1] and training establishments, and its concentration on mechanized

[1] Army service was compulsory (with statutory purchasable exemptions) for two years, followed by service in the Reserve till the age of forty-five. Voluntary service could be substituted for compulsory either during or after the initial two years, and would run thereafter in two-year terms without affecting Reserve liability.

2: Dowson G-5 (1929-30) 1932 MHl Iraq MHl

PART III.—EXISTING CONDITIONS. STATUTORY TENURES

1 AND 2. STATUTE LAW

423 671 1. The foundations of the statute law governing the tenure of land in el 'Iraq are the (old) Ottoman Land Code of 1274 (1858), and the Land Registration (Tapu)* Law of the following year. These laws were supplemented, amended, modified, amplified and curtailed by subsequent Ottoman legislation, or orders deemed to have the force of law, while the country remained under Ottoman jurisdiction. And there has also been a certain amount of recent el 'Iraqi legislation applying to land tenure. The basic concepts of the two first laws are for the most part generally recognised, although the position of the statute law on land tenure is far from clear on many points and although, as will appear more fully later, throughout the majority of the land, these laws have been largely disregarded.

423 The Land Code recognises five legal categories of land :

(1) Mulk (El arazi el mumluka). Land held in undiluted ownership assimilated to that of chattels. Such ownership is governed by the provisions of the Sacred Law and not by those of the Civil Statute Law.†

(2) Miri (El arazi el amiriya). State land the usufructuary possession (tesaruf) of which is granted out on the registered tenure prescribed in Book I of the Land Code.

(3) Waqf (El arazi el muqufa). Land, some right over which has been dedicated to a pious purpose.

(4) Matruka (El arazi el matruka). Land "left" or specially reserved for some public purpose.

(5) Mewat (El arazi el mewat). Dead or unreclaimed land.

This classification has never been applied as a whole in el 'Iraq and is not applicable as it stands. The third category (Waqf or Dedicated Land) is redundant. Land must belong to the first category (mulk) to be truly dedicated in waqf in accordance with the Sacred law. The untrue dedication, known as takhsisat (appropriated) waqf, is restricted to interests in the revenue arising from the land (tithe, fees, etc.) and leaves the category of the land unaffected. For practical purposes untrue waqf is confined to dedication of interests arising from land of the second category, but takhsisat waqf in mulk interests (e.g. tithe) may exist.

While the third category is unnecessary no provision is included for cultivated and cultivable land that is retained in the legal possession, as well as the legal ownership, of the State. State land of the second category (miri) is confined to land of which the legal possession is granted out on registered tenure to third parties for exploitation. State land of the fourth category (matruka) is land reserved for public purposes. State land of the fifth category (mewat) is waste unexploited land.

* Turkish dictionaries derive this word from the verb tap-mak to worship, whence an act of homage, an acknowledgment of oneself a vassal, especially by the acceptance of a feudal fief. Hence a title deed, etc.

† Mulk means property. Everything that is owned, whether movable or immovable, is mulk. Immovables classified as mulk (i.e. property) are in the absolute ownership of the proprietor. "Every man can deal as he likes with his mulk," Majelle Art. 1192.

6:Ireland S-5 (no date)1937 MHI Iraq MHI

175* 727* 436 The introduction of Indian currency followed naturally on the coming of the Expeditionary Force, whose needs were paid for in rupees. A proclamation forbade the use of depreciated Turkish paper money[1], and the inadequate supply of small Turkish coins was driven from the bazaars. Turkish gold *liras*, however, continued to circulate, but their import and export were regulated.

Establishment of a Judicial System

175* 727* 671 For the administration of civil and criminal justice, a special code, known as the 'Iraq Occupied Territories Code,[2] was created largely from laws in force in India.[3] The Code, promulgated August 1st, 1915, from which time the legal system of the Occupied Territories may be said to date,[4] established courts for the enforcement of civil rights by legal action, hitherto in abeyance, and criminal courts to supplement the military courts. These courts, functioning under the authority of the General Officer Commanding, were supervised by Lieut.-Colonel S. G. Knox, Senior Judicial Officer, and by Captain C. F. Mackenzie, Junior Judicial Officer, both of whom were members of the Indian Political Department.

Among the reasons put forward for the substitution of the Anglo-Indian Judicial system for that of the Turkish system, were the impossibility of reproducing within a limited time the hierarchy of courts culminating in the Court of Cassation at Constantinople, the inability to find judges and officials familiar with the Turkish system, as well as other reasons already given

[1] *Proclamations, notices, etc., relating to the Civil Admin. . . . issued between December* 22, 1916, *and July* 1st, 1918 (Baghdad, 1918), Proc. No. 1, December 22nd, 1916.

[2] '*Iraq Occupied Territories Code*, 1915 (Bombay, 1915). Also six supplements to December 31st, 1918 (hereafter '*I.O.T. Code*).

[3] A preliminary schedule of thirty-four Indian Acts to be applied in the Occupied Territories was annexed to the Code.

[4] Arrangements to reconstitute the courts had begun shortly after the appointment of the Senior Judicial Officer, April 7, 1915.

1-[British Expeditionary Force in 1915-Analyst]

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above. It was also held that the Foreign Jurisdiction Act of 1890[1] could not be applied and that any laws made or administered must take the form of orders issued by the Army Commander who could, by notification, depute his powers to Civil Judicial Officers and regularize the exercise of the orders so made in the form of a code[2] such as the one actually promulgated.

Under the Code, the Senior Judicial Officer exercised the civil and criminal powers normally assigned in India to the District and the Sessions Judge, respectively. The Junior Judicial Officer possessed the powers of an Assistant Judge and a District Magistrate. In addition, the Junior and the Assistant Judicial Officers were invested, as in India, with powers of Small Cause Court Judges.[3]

Powers were given under the Code to enforce any Indian Law, which might be amended to meet local conditions,[4] a provision which was freely used,[5] as was also the power to make rules of procedure for the better execution of any matter arising in the course of any civil or criminal case.[6]

Although provision was made for the application, subject to stated exceptions,[7] of Turkish Civil Law,[8] the exceptions included in practice the bulk of suits coming before the courts.[9] Thus, for all intents and purposes, Turkish Civil Law disappeared. Turkish Criminal Law, the Law of evidence and the Laws of Civil Procedure were expressly excluded from operation.[10]

The 'Iraq Code in its provisions and in the manner of its application seems to have made little distinction between India and 'Iraq. Indeed, Section 8 explicitly stated 'the Code of Criminal Procedure and other enactments for administration

[1] 53-54 Victoria cap. 37.
[2] *Administration Report, Judicial Department*, 1915 (Calcutta, 1916), p. 1 (hereafter *Judicial Report*, 1915).
[3] Order by the General Officer Commanding, August 1st, 1915, in *'I.O.T. Code*, p. 25.
[4] *'I.O.T. Code*, Sections 6 and 55.
[5] *Judicial Report*, 1915, p. 1.
[6] *'I.O.T. Code*, Section 51.
[7] Ibid., Sections 49, 50.
[8] Ibid., Sections 6, 32, 50.
[9] *Judicial Report*, 1915, p. 1.
[10] *'I.O.T. Code*, Section 48.

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of criminal justice in British India shall have effect as if the Occupied Territories were a district in the Presidency of Bombay'. This section, taken with the Code as a whole, tends to confirm the impression that valid as were some of the reasons advanced at the time for the introduction of the new legal system, the most cogent reason was the underlying desire to pave the way for the painless absorption of lower Mesopotamia to India.

The belief, apparently held at this time, that the Indian system introduced by the Code was no more foreign to Turkish Arabia than the Turkish system which it replaced,[1] and that therefore the change was acceptable, seems scarcely in accordance with the facts. As Sir Edgar Bonham-Carter, head of the Judicial system in Mesopotamia, 1917-21, has pointed out:

> The present organization of these Courts and the Codes (of the Turks) have been in force for more than a generation, and indeed some of the Codes date back to a much earlier date. The people are accustomed to them, and are accustomed to regulate their transactions by them. This is especially true of the Baghdad mercantile community ... Lawyers and Government officials have been trained in the procedure of the Courts and use of the Codes.[2]

The same statement could hardly be made concerning the Indian Laws, none of which were available either in Arabic or in Turkish when introduced. Even the Code was not translated into Arabic for some time following its introduction. Only four of the several score of Indian Laws had been translated into Arabic at the end of 1917, a fact which called forth a protest from the retiring Senior Judicial Officer, Lieut.-Colonel S. G. Knox.[3] With the introduction of the Code, Arabic became the official language in the Courts, a measure popular to the people. Its use, however, was not entirely new. A circular from

[1] Wilson, Sir A. T., op. cit., p. 68.

[2] *Report on the Admin. of Justice, Baghdad*, 1917, in *Admin. Report, Baghdad*, 1917, p. 184.

[3] *Review of the Reports of the Administration of Basrah Wilayet from April to December*, 1917 (Calcutta, 1918), (hereafter *Admin. Rep., Basrah*, 1917): *Report on the Admin. of Justice*, 1917, p. 108.

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the Turkish Ministry of Interior in April, 1913, had directed that the use of Arabic should be allowed in the Courts of Justice and in public offices. In spite of the failure to carry out this concession literally, the use of Turkish was more of an affront to Arab sentiment than a handicap to litigation. Turkish was, and in many centres still is, the polite language, much as French was at the Courts of Prussia and Russia in the eighteenth century.

Although criminal cases could be tried in these newly established civil courts,[1] the bulk of such cases was not sent to them. Serious cases, mainly robbery under arms, continued to be tried by military courts, under a highly summary procedure.[1] In Basra, 'Ashar, 'Amāra and Nāsirīya, the Military or Deputy Military Governors decided disputes of all kinds, while in the districts the same powers were exercised by Political Officers. Until after the fall of Baghdad no civil courts existed outside of Basra town.

Justice in Tribal Areas

It was soon evident that the 'Iraq Code could not be applied in its entirety to the tribal areas, comprising practically all of the Occupied Territories outside the towns. It was also clear that special powers were needed by the Political Officers to dispose of civil and criminal cases in their districts. To meet the situation, the Tribal Criminal and Civil Disputes Regulation was drawn up by Mr. H. R. C. Dobbs,[2] on the lines of the Indian

[1] *Admin. Rep., Basrah, 1917; Rep. Military Governor of Basrah, 1917*, p. 199.

[2] Henry Robert Conway Dobbs, G.B.E., K.C.S.I., K.C.M.G., K.C.I.E. (1871-1934), may be rightfully called one of the makers of modern 'Iraq. He saw wide and distinguished service in India, Persia and Afghanistan. As Revenue and Judicial Commissioner to Baluchistan, 1909, 1911 and 1917, he came into direct contact with the 'Sandeman System'. He was under orders as Resident to Turkish Arabia when war broke out in 1914, but it was as Revenue Commissioner that he supervised the organization of administration, 1915-16, while Sir Percy Cox, Chief Political Officer, enlarged political relations with the Arabs. Versatile in talents, but essentially an administrator, he brought to the difficult period, 1923-9, when he served as High Commissioner to 'Iraq, a great capacity for realistic thinking, a highly developed sense of duty, and a deep loyalty to the Empire which dominated all his relations with the Arabs.

[1] [Under British Military administration ca 1917]

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175* 871 727 The years of neglect of education, including the war years, the lack of trained teachers and of equipment and the paucity of the funds sanctioned by the Civil Administration which rendered it impossible to overcome adequately the lack of teachers by bringing them from Syria and Egypt, contributed to the slow creation of educational facilities. Nevertheless, the aims of the Department were kept high. These, as summarized by the Director of Education in 1918, were:

> to provide a sound elementary education, on which to base an edifice lasting, endurable and firm. To open new schools gradually as trained teachers become available. To select as teachers only the best candidates, socially, morally and mentally, and to pay them well. To never lose sight of the real object in view — the formation of character and the spirit of good citizenship.[1]

As long as British advisers played a decisive part in the educational affairs of 'Iraq, these aims formed the basis of their policy.

Judicial System

671 175* 727* In accordance with Great Britain's policy of establishing an Arab administration in Baghdad, of which the promise in General Maude's Proclamation not to introduce alien institutions was a public intimation, the instructions of H.M. Government had made it clear that the Occupied Territories Code was not to be introduced into Baghdad Wilayet.[2] The policy adopted, therefore, was not 'to make a clean sweep of the Turkish legal system and to introduce a new system based on English models, as had been done in Basrah Wilayet', but rather 'to carry on the Turkish organization of Courts and system of law, making such immediate modifications only as are necessary to ensure justice and a reasonably efficient administration'.[3]

[1] *Admin. Rep. Ed.*, 1918, p. 10.
[2] Telegram, S/S for India to Political, Baghdad, March 29th, 1917.
[3] *Administrative Report of Justice from the Occupation of Baghdad to* 31.12.17, p. 4 (hereafter *Admin. Rep. Justice*, 1917).

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INITIATION OF ADMINISTRATION

As at the occupation of Basra, most of the Turkish Judicial personnel had fled. The more recent records had been removed or destroyed. Beyond the institution of a Court of Small Causes and a *Shara'* Court (Muslim Law Court) in July,[1] Civil Courts were in abeyance until the Courts' Proclamation of December 28th, 1917,[2] reconstituted the Civil Courts under Mr. (later Sir) Edgar Bonham-Carter as Senior Judicial Officer. He had arrived in October, and after studying the situation with the experience gained in his long and distinguished career in the Sudan Legal Department, had outlined the essential requirements to be embodied in the proclamation.

Under the Turks, First Instance Courts had existed at the headquarters of each *Liwā* or District, and of each *Qādha* or Sub-district: a total of ten *Liwā* Courts of First Instance and forty *Qādha* Courts of First Instance in the three wilayets of Basra, Baghdad and Mosul. Obviously, from the standpoint of the prevailing poverty and the sparseness of the population, the number was excessive. In addition, most of the judges had been untrained if not actually incompetent. Under the new system, a Civil Court of First Instance, normally to be composed of a British judge and two Arab judges, was to be reopened at Baghdad and later, elsewhere, as deemed necessary.[3] Peace Courts which were also Small Cause Courts, such as had been established in Baghdad and a few other places just before the war, were to be reconstituted wherever required.[4] Elsewhere either Judges of Courts of First Instance, Political Officers or other officers were given the right to officiate.

In the days of the Turks, Appeals lay from the lower Courts to a Court of Appeals situated at the capital of each wilayet.[5] Decisions from these Courts could be revised by the Court of

[1] *Proclamations*, 1916-1918: Proclamation No. 8, July and, 1917.
[2] Ibid., Courts' Proclamation No. 17, December 28th, 1917. The date 'end of December, 1918' given for this Proclamation in *Review C. Admin.*, 1914-1920, p. 94, is obviously a misprint.
[3] Ibid., Courts' Proclamation, Section 3 (1). [4] Ibid., Section 5.
[5] Normally composed of a Turkish President and four Arab Judges. *Admin. Rep. Justice*, 1919, p. 1.

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and procurators, which it would have been beyond the capacity of the Civil Administration to supply. Nor would it have conduced to the effective administration of justice if the Magistrates, most of whom were English officers with little previous experience of the administration of law, attempted to follow the elaborate Ottoman Procedure.[1]

In addition, the Ottoman Penal Code presented difficulties. Although based on the French Penal Code, it had been subjected to so many amendments since it was issued in 1859 that it was, in the opinion of the Senior Judicial Officer, 'unscientific, ill-arranged and incomplete'.[2] The first difficulty was overcome by the creation of a special code known as the Baghdad Criminal Procedure Regulations,[3] brought into operation January 1st, 1919. Until then all criminal cases had been tried by Military Governors and Political Officers.

Although the Regulations adopted one or two sections from the Ottoman Criminal Procedure,[4] the ultimate origin of which was the French Criminal Procedure, its main provisions revealed the inability of those in the Civil Administration to dissociate themselves from Indian traditions or to escape from the application of British Military Law. Both of these formed the basis of the Sudan Code of Criminal Procedure from which the Regulations were drawn. The new Regulations were admittedly subject to the exigencies of war and of military occupation.[5] Offences committed by members of the Army of Occupation even against the inhabitants of the country were not to be tried under them. It was expected, however, that after the conclusion of hostilities, a permanent Code would be prepared.

[1] *Admin. Rep. Justice*, 1920, p. 2 (7).
[2] *Memorandum on Baghdad Penal Code*, by the Senior Judicial Officer, November 21st, 1918. Also *Admin. Rep. Justice*, 1918, p. 2 (7).
[3] Promulgated by Proclamation of General Officer Commanding, November 15th, 1918. (These Regulations hereafter *Bd. C. P. Reg.*).
[4] Particularly Chapters iii and ix, concerning Procurators, and Chapter xi, concerning Civil Complaints and Civil Damages. For Ottoman Criminal Procedure, see Young, Sir G., op. cit., Vol. VII, pp. 226 ff.
[5] *Bd. C. P. Reg.*, Sec. 2 (1).

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Four classes of Criminal Courts were to be constituted: 1. Courts of Session; 2. Courts of Magistrates of the First Class; 3. Courts of Magistrates of the Second Class. 4. Courts of Magistrates of the Third Class.[1] A Court of Session was to be a Court consisting of three Magistrates, of whom one at least must be a Magistrate of the First Class.[2] Political Officers and British Judges were to be Magistrates of the First Class, Assistant Political Officers and Arab Judges were to be Magistrates of the Second Class.[3] The Civil Commissioners might appoint any person a Magistrate of the First, Second or Third Class.[4]

The Ottoman Penal Code was replaced on January 1st, 1919, by the Baghdad Penal Code,[5] based largely on the former, but with amendments and additions from Egyptian sources, in turn based on the French Penal Code.

Among the tribes, the Tribal Criminal and Civil Disputes Regulation continued to be applied with considerable success.[6] It was regarded in the tribal areas as 'undoubtedly the most satisfactory' method of settling tribal disputes,[7] as the reason for decrease of crime[8] and as 'one of the props of the tribal system'.[9] Although doubt was cast on both the wisdom and ability of the Administration to continue the tribal system indefinitely,[10] only in 'Amāra Division was uncertainty felt as to the usefulness at that time of the Tribal Disputes Regulation.[11]

[1] *Bd. C. P. Reg*, Sec. 4.
[2] Ibid., Sec. 5.
[3] Ibid., Sec. 6.
[4] Ibid., Sec. 5.
[5] Promulgated by Proclamation of the General Officer Commanding, November 21st, 1918.
[6] For views of Political Officers: *Admin. Reports*, 1918: *Shatrah* (*Nasiriyah*), p. 387; *Qurnah*, p. 306; *Kut*, p. 384; *Admin. Report*, *Hillah*, 1919 (Baghdad, 1920), p. 3; *'Amarah Division Admin. Report*, 1920-1921 (Baghdad, 1921), p. 7; *Monthly Rep'ts., January*, 1919, Basra Sanjaq, p. 32.
[7] *Admin. Reports*, 1918: *Hillah*, p. 127.
[8] Ibid., *Nasiriyah*, p. 355.
[9] Ibid., *Hillah District*, p. 144.
[10] Ibid., *'Amarah*, p. 336; *Hillah District*, p. 34; *Hillah Division*, pp. 120-1; *'Amarah Report*, 1919, p. 9; *'Amarah Report*, 1920-1921, p. 25.
[11] *'Amarah Report*, 1919, p. 11.

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INITIATION OF ADMINISTRATION

Amalgamation of Basra and Baghdad Courts and the Creation of the Judicial Department

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The political and administrative considerations which motivated the amalgamation of the administration of the Basra and Baghdad wilayets in September, 1918,[1] applied with equal force to the judicial systems which had not then been assimilated.[2] On January 1st, 1919, however, the two systems were finally consolidated,[3] the 'Iraq Occupied Territories Code and all Indian and British Acts operative under it being repealed with the exception of nine Indian Laws and one English Law, set forth in a special schedule. 'The change was effected without difficulty and was welcomed by the population since it replaced a foreign system of law and procedure by one with which they were familiar.'[4]

The judicial system of Mōsul, the administration of which H.M. Government had at one time desired to organize separately, in anticipation of it being assigned to France at the Peace Settlement, was also assimilated, on the same date, to the system in operation throughout the Occupied Territories.

The number of Courts established under the Civil Administration, 1914-20, had been recognized as being as insufficient as the number under the Turks had been excessive.[5] Expansion and reform, however, had proved difficult owing to the necessity of subordinating the policy of the Department to that of the General Administration, owing to the lack of funds[6] and to the

[1] *Supra*, pp. 111-112.

[2] Cogent reasons for amalgamating the two judicial systems were advanced in *Review Admin. Basrah*, 1917, p. 6.

[3] *Basrah Courts' Amalgamation Proclamation*, 1918, by the General Officer Commanding, December 24th, 1918.

[4] *Admin. Rep. Justice*, 1919, p. 4 (12); *Admin Report*, 1918: *Nasiriyah*, p. 355.

[5] *Admin. Rep. Justice*, 1918, p. 1; ibid., 1919, p. 2 (4).

[6] Ibid., 1920, p. 8 (16). The proportion of expenditure on Judicial services to total expenditure and to receipts, based on figures given in Table I, p. 152, is as follows:

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difficulty in finding suitable staff, whether 'Iraqi or English, to undertake them.[1]

Recognition was not lacking of the unsatisfactory nature of legislation which, during the whole period of the Occupation was by proclamation by the General Officer Commanding, or by regulations or orders issued by the chief civil authority and the Judicial Officer, under authority of the General Officer Commanding. Lieut.-Colonel Knox, Senior Judicial Officer, in his report for 1917 had commented:

> It is high time that he (Senior Judicial officer) be relieved of his legislative duties, which should be the special task of a legal Secretary . . . Assigning work to one such person would put an end to notices of spurious legality, threatening the public with dire and unspecified penalties for dubious offences.[2]

Mr. Bonham-Carter, on his side, believed that while considerable legislation would be necessary before the Courts could contribute to better conditions in 'Iraq, no radical legislative improvements could be undertaken without the coming of peace and without a Representative Legislative body.[3]

Under Mr. Bonham-Carter, the policy of employing 'Iraqis

[1] *Admin. Rep. Justice*, 1920, p. 8 (16).
[2] *Review Admin. Basrah*, 1917: *Report on Admin. of Civil and Criminal Justice in Basrah Wilayet, by Courts established under the I.O.T. Code, during* 1917, p. 107.
[3] *Admin. Rep. Justice*, 1919, p. 9 (23); ibid., 1920, p. 8 (16).

	1917–18	1918–19	1919–20
	Rupees	Rupees	Rupees
Percentage of Expenditure on Judicial services to total Expenditure	2·14%	2·24%	1·78%
Percentage of Expenditure on Judicial services to total Receipts	1·57%	1·41%	1·43%

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both as Judges and as clerical staff was applied from the first.[1] Although difficulty was often experienced in making suitable selections of Judges and *Qādhīs*,[1] he 'had no hesitation in saying that the work had been done efficiently'[2] through the 'valuable services of the Arab Judges and staff', without whose 'help it would have been hardly possible . . . to carry out the policy of applying Turkish Law and Procedure'.[3]

TABLE II

The following Table indicates the nationality of personnel of the Judicial Department, 1918-20.

	1918* (Baghdad Wilayet only)	1919†	1920‡
British	6	10	11
Indians	—	4	6
'Iraqis (Muslims)	82	197	247
" (Christians)	1	9	12
" (Jews)	9	9	12
Syrians	—	1	1
Egyptians	—	1	—
Armenians	2	1	—
Total non 'Iraqis (A)	8	17	19
Total 'Iraqis (B)	92	215	271
Percentage of (A)	8	7·3	6·6

* *Admin. Rep. Justice*, 1918, p. 5. † Ibid., 1919, p. 8. ‡ Ibid., 1920, p. 7.

To this policy of rendering more than lip-service to the principle of employing Arabs wherever possible may be attributed the comparative immunity of the Judicial Department from the criticism and hostility directed by 'Iraqī Nationalists, during the period before the establishment of the National Government, against the unsympathetic attitude in other Departments of the Civil Administration.

[1] *Admin. Rep. Justice*, 1918, p. 6 (15). [2] Ibid., p. 2 (5).
[3] Ibid., p. 6 (15). Also ibid., 1920, p. 8 (15).

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that eventually all cases involving Religious Law will be heard in the Civil Courts, along the lines of the Judicial system in force in present-day Turkey. Steps towards that end have been the appointment wherever possible of Civil Judges to act also as *Qādhīs* of the *Shara'* Courts,[1] and the passing of a law legalizing the transfer of law cases from *Shara'* Courts to Civil Courts. These steps have been facilitated both by the ability of the 'Iraqī Civil Judges to administer the *Shara'* Law and by the evident approval of a substantial portion of the public who have found in Turkey, both past and present, the model for 'Iraqī statecraft.

In the administration of justice in tribal areas, the application of the Tribal Criminal and Civil Disputes Regulations[2] has continued but with much controversy. On the one hand, it has been held that the tribes represent a class unfamiliar with the laws and conventions applicable in a more highly civilized society, but possessing a code which, although harsh and even repellent, is definite and is recognized among themselves. The code, according to this view, should be applied to the tribes through the Tribal Disputes Regulations until such time as the normal system of justice can be brought into force among them. This has been the viewpoint of the Ministry of Interior charged with administering the Regulations. On the other hand, it is contended that two systems of justice should not exist side by side in 'Iraq; that much evasion of justice has already occurred through non-tribesmen claiming the right to be tried under the Regulations; and that tribesmen must be assimilated by the body politic. This opinion, although it may not be put forward officially by the Ministry of Justice, has nevertheless influenced the policy of responsible 'Iraqī officials in the Ministry. It has also been repeatedly presented in the Chamber, principally by urban deputies who in their speeches have voiced the prejudices of the greater part of the townsmen of 'Iraq.

[1] In 1931, Civil Court Judges were also *Shara' Qādhīs* in 24 places.
[2] As amended, December 28th, 1924. See *Compilation*, 1924, p. 63.

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671 There can be no escape from the fact that the Regulations
619 have been open to abuse and that revolting crimes have been committed by men who, in spite of their long familiarity with the legal codes, have taken advantage of almost untraceable tribal connections to escape punishment strictly due them.

It would seem, however, that now as in 1932 the Regulations represent the only equitable way of dealing with tribesmen. Reforms are no doubt needed, particularly in the definitions between tribesmen and townsmen, but it would also seem that the tribal viewpoint cannot be changed by the mere application of laws to the tribal areas. Until education, land settlement and a liberal-minded official class have brought greater knowledge and familiarity with the customs and conventions prevailing in the rest of 'Iraq, the extension of the legal system in its entirety will be fraught with injustice and with the gravest political and social dangers.

671 A great portion of the work of drafting and formulating the legislation which fell to the Ministry of Justice arose from the necessity both of filling in the outline set forth in the Constitution and of bringing into existence the special laws which by the express stipulations of that document were to govern the application of the principles contained in it.

Legislation of the first category which, after being drafted in the Ministry, was passed by Parliament, included the *Liwā* and Municipal Administration Laws;[1] the Jewish and Christian Communal Court Laws, cited above; the Currency Law;[2] and a series of Regulations for the various Ministries, as well as a number of other laws which put form and substance on the skeleton of the Constitution. Legislation implementing provisions of the Constitution included the Judges and *Qādhīs* Law;[3] Employment of Foreigners Law;[4] a Law for determining

[1] *Compilation*, 1927, *Liwā* Administration Law, No. 58 of 1927; ibid., 1931 Municipalities Administration Law, No. 84 of 1931.
[2] Ibid., 1931, 'Iraq Currency Law, No. 44 of 1931.
[3] Ibid., 1929, No. 31 of 1929. [4] Ibid., 1927, No. 36 of 1927.

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Conflicts of Jurisdiction between Courts;[1] and other laws interpreting Part V, The Judicature, of the Constitution; the Law of Associations[2] and the Press Law.[3]

A further heavy burden on the Ministry of Justice has been the constant necessity of reviewing and of preparing legislative amendments in accordance with the changing needs of the country, to the three forms of law in force in 'Iraq:

(1) the Ottoman Laws in force in 'Iraq before the British Military Occupation, in so far as they have not been amended or repealed by the enactments of the Army Commander during the Occupation or by the enactments of the successive Governments after the Occupation;
(2) the proclamations, regulations, or laws issued by the Army Commander, the Civil Commissioner, the High Commissioner, and the 'Iraqi Government, respectively, between the 5th November, 1914, and the 21st March, 1925;
(3) Laws enacted by the 'Iraqi Parliament since the 21st March, 1925.[4]

Such amending legislation has been of necessity slow and laborious, but it has resulted in the partial redrafting of the Penal Code, the Civil Procedure Code and other legislation inherited from previous regimes.

In the work of the Ministry, both in the Courts and in the supervision of judicial administration and of legislation, the British officials, never more than six in number from 1926 to late 1932, have played decisive parts. These officials in their various positions guaranteed under the Judicial Agreement of 1924, as Adviser to the Minister, as President of the Court of Appeal and as the four Judges of Courts of First Instance, have ensured speedy justice to 'Iraqis as well as to foreigners in so far as has lain within their power. They have also assisted their colleagues in the interpretation of the provisions of the Con-

[1] *Compilation*, 1929, No. 8 of 1929.
[2] Ibid., 1931, No. 82 of 1931.
[3] Ibid., 1926, p. 3.
[4] *Progress of 'Iraq*, p. 83.

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693 stitution. Their principal contribution, however, has been
671 their aid in creating a standard for the administration of justice and the conduct of the courts. Their insistence on justice without regard to distinctions of class or religion and their unfaltering rectitude in conformity with the best British traditions have left what may be hoped is an indelible imprint on the Judicial system of 'Iraq. To them is due in a great degree the high standard of justice which prevailed in 'Iraq before 1932. Their task has never been an easy one. The traditions inherited from Ottoman days that justice could be bought and that a Judgeship was a means of amassing a fortune, were too deeply ingrained to be eradicated easily and at once. As great an obstacle to equity in the courts was the unfortunate susceptibility of the Judges to outside influences, personal, official and religious. Thus the decisions of Judges of otherwise impeachable integrity have been known to be swayed by fear of public criticism, of the threatened displeasure of high officials or by political and religious motives.

Education

871 The British educational policy for 'Iraq from the time of the Civil Administration largely centred around the provision of primary schools supplemented by denominational schools. The policy of the 'Iraq Government, in brief, has been the extension of a system of national schools, primary and secondary, accompanied by the gradual elimination of denominational schools with their connotations of foreign and consequently undesirable influences.

Between these two policies has been waged incessant war, in which British officials employed by the Ministry usually gave way, particularly as they were rarely supported by the Residency to the same degree as were their colleagues in other Ministries. Moreover, control passed to 'Iraqi officials throughout the Ministry earlier than in any other Ministry or

7: International Bank N, S-4 (1951) 1952 MH1 Iraq MH1

ments in the best use of water mentioned earlier and could assist in disseminating the findings. They would be an important means of developing the concept of common responsibility for the efficient operation and upkeep of irrigation systems and might ultimately serve also to disseminate information on agriculture.

The legal situation with respect to water rights and the construction, maintenance and operation of irrigation and flood-control works is defined by Articles 1234 to 1238 of the Mejelle, or Ottoman Civil Code, and Law No. 23 of 1923 and its successive amendments. Repeated changes in this legislation have made it difficult to determine the validity of certain provisions. It would be desirable to codify and clarify the legislation and, in the course of such a review, to eliminate some of its defects. It would be advisable, for instance, to ensure a right of passage for canals across the property of third parties with compensation fixed by the Irrigation Department in accordance with defined criteria. At present such a right of passage is recognized but with the proviso that the interested party must buy or lease the necessary land, which, in practice, may lead to extortionate terms. There is also a need for a review of old water rights. While presumably such rights cannot be abolished, the right to use water might well be brought into closer accord with the amount of land to be irrigated.

The law makes the Directorate General for Irrigation in the Ministry of Communications and Public Works responsible for the construction, operation and maintenance of the irrigation and flood-control schemes. In 1949 the irrigation services had a staff of 1,330 persons, classified approximately as follows:

Engineers	26
Assistant engineers	20
Overseers	94
Office personnel	250
Bund personnel	820
Specialists	120

On the whole, there is an insufficient number of competent, experienced engineers; and pay scales are inadequate to retain able men in a service which often entails considerable hardship. The staff in the provinces is generally not large enough to cope with technical problems along with the many administrative questions

57:Davis S-4 (no date) 1953 M1 Middle East
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642 ance with law. The Councils referred to above shall be under the
635 supervision of the Government.

Part VIII

Confirmation of Laws and Judgments

642 Art. 113. Ottoman Laws published before November 5th, 1914,
671 and laws published on or after that date and which have remained in force in Iraq up to the time of the publication of this law, shall remain in force in Iraq so far as circumstances permit, subject to any modification or repeal in conformity with the proclamations, regulations and laws referred to in the following article, and until they are altered or repealed by the legislative power, or the High Court issues a decision rendering them null and void in accordance with the provisions of Article 86.

Art. 114. All proclamations, regulations and laws issued by the Commander-in-Chief of His Britannic Majesty's Forces in Iraq, the Civil Commissioner, and the High Commissioner, and those issued by the Government of His Majesty King Faisal, during the period between November 5th, 1914, and the date of the coming into force of this Constitution, shall be considered to be valid as from the date on which they came into force. Any portion thereof still unrepealed by that date shall remain in force until changed or repealed by the legislative power, or until the High Court issues a decision rendering them null and void, in accordance with the provisions of Article 86.

Art. 115. Every person shall be considered to be released and exempt from all claims relating to any acts performed by him in good faith in conformity with instructions issued by the Commander-in-Chief of His Britannic Majesty's Forces in Iraq, the Civil Commissioner, the High Commissioner, the Government of His Majesty King Faisal, or by an official duly authorised thereunto, whether in a military or civil capacity, with a view to the suppression of hostilities, the establishment and consolidation of order and public security, or the carrying out of orders issued in accordance with martial law between November 5th, 1914, and the date of the coming into force of the Constitution. Every act referred to in this article shall be considered to have been done in good faith, unless the complainant can furnish proofs to the contrary. Any action or judicial

57: Davis S-4 (no date)1953 Ml Middle East
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proceeding with regard to any such act shall not be entertained and 642
shall be considered null and void in the absence of such proof brought 671
forward by the complainant.

Art. 116. All judgments passed in Civil and Shara' actions by the Ottoman Courts before the occupation by His Britannic Majesty's Forces, and likewise judgments passed in Civil and Shara' actions by the Courts set up after the said occupation, or by Political and Assistant Political Officers, in matters which came within their jurisdiction, shall be considered to have been given by the regularly constituted Courts of Iraq.

Art. 117. All judgments and decisions in criminal matters given by the Courts set up after the occupation of His Britannic Majesty's Forces or by Courts-martial, Military Courts or by any Military Governor or Political or Assistant Political Officer or other officials authorised to try criminal offences and also the penalties imposed upon those persons tried in the Courts referred to above, or by the persons referred to, shall all be considered to have been passed by the regularly constituted Courts of Iraq.

Part IX

Constitutional Amendments

Art. 118. Parliament may, within one year from the coming into 642
force of this law, amend any of the subsidiary matters contained therein or add to them, in order that the objects of this law may be given effect, provided that Parliament shall agree by a two-thirds' majority of votes in both Chambers.

Art. 119. Subject to the provisions of the preceding article, no amendment whatsoever may be made in the Constitution for a period of five years from the date of the coming into force thereof, nor after the expiration of that period, except in the following manner:

Every amendment must be approved by a two-thirds' majority of both the Chamber of Deputies and the Senate. After such amendment has been approved, the Chamber of Deputies shall be dissolved and a new Chamber elected. An amendment which has been approved by the former Chamber shall be submitted again to the new Chamber and Senate. If approved by a two-thirds' majority of each

latore fostered irrigation practices and the construction and repair of conduits and established, under the law of 9/VI/1309 as amended by those of 21/III/1312, 13/VI/1313 and 15/XII/1316, the Agricultural Bank which is empowered to open credit for the implementation of such works. N 312 423 654

On the other hand, the government intervened and obtained, under the laws of 6/VII/1309, 15/XII/1310 and 25/VIII/1316, credit for the irrigation of abandoned, formerly fertile areas and for the subsequent sale of these improved lands to private individuals on condition that they be rationally cultivated.

The Independent Irrigation Institute

The above institute, established under the law of 20 May 1943, was set up with a view toward developing and improving irrigation practices in Iran. It has been placed under the Ministry of Agriculture for a period of ten years (Article 4), and annual credit has been allocated to it by the government (Article 2). N 647 312

This independent Institute shall supervise and carry out all irrigation and drainage projects (Article 11). It shall provide technical assistance to private individuals who wish to carry out irrigation works at their own expense and shall design plans for these works (Article 5).

It shall have the right to collect dues for the allocation of water (Article 6). It shall form societies for the implementation of irrigation works in which private owners may participate. N [651]

The institute is authorized to set up the necessary administrative offices to ensure the distribution of water and to guarantee the maintenance of dams, reservoirs, public canals, kanâts, etc. It may also compel the owners of kanâts to repair, clean or destroy them and eventually to carry out these operations at their own expense, regaining the amount involved either directly or on crops. 647 312 656

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Since the gradual occupation of Iraq by the British Forces Q 671 312

671 (1914-1919) 1/ and its separation from the Ottoman Empire (Treaty
312 of Lausanne, 1923) the Mejelle or Ottoman Civil Code has remained the basis for Iraq's water laws.

Aside from this Code, other laws relating to water use have been promulgated and these legislative measures were supplemented from time to time by Regulations and Instructions. The laws, Regulations and Instructions now in force on water use in Iraq are enumerated below:

1. The Mejelle Civil Code, compiled from 1869 to 1876.

2. Law No. 52 of 4 October 1923 which has been amended by various other laws and amplified by Regulations and Instructions.

   a. Circular No. 508 dated 26 January 1924 giving instructions for the better execution of the law.

   b. Royal Iradah (Decree) No. 118 dated 31 July 1926 which makes this law applicable in ten out of fourteen liwas (administrative districts).

   c. Royal Iradah (Decree) No. 171 dated 20 June 1931 which makes the law valid throughout Iraq.

   d. Amendment Law of 22 January 1925.

   e. Amendment Law No. 39 of 24 April 1927 defining "irrigation works of public importance" to be so declared by special Regulation (see next sub-para. "f") and (ii) substituting with amplification Article 6 of the Law in connection with responsibilities for the repairs and maintenance of irrigation works.

   f. Regulation No. 56 of 9 October 1941, detailing the various terms of "irrigation works of public importance."

1/ Proclamations issued from time to time by the General Officer Commanding in Chief of the Army of Occupation had legal effect on those areas gradually occupied. The validity of these Proclamations were subsequently recognized by the Constitution

g. Amendment Law No. 1 of 26 February 1945 amending again Article 14 of the 1923 Law, and adding a provision for silt clearance by mechanical means under some conditions. 671 312

3. The Forcible Assistance Law No. 27 of 31 March 1923, as subsequently amended by Law 24 of 30 March 1936.

4. Law for Rice Cultivation No. 23 of 31 March 1932, amended by the Law Amending Rice Cultivation Law No. 53 of 15 May 1940 prescribing that Regulation shall determine the areas in which rice cultivation is to be prohibited or restricted for health reasons, economy in the use of water or for the conservation of the soil.

5. Liwa Administrative Law No.16 of 15 February 1946 which, in Article 24, paragraph 9, prescribes among the various functions of the mutassarrif (prefect or governor) in his Liwa (one of the 14 administrative districts of Iraq) that he shall "give assistance and facilities to cultivators and ensure distribution of water to their cultivations." Paragraph 1 (b) of Article 63, places within the duties of the Liwa administration "the improvement and drying of pools and swamps." Paragraph 8 of Article 65 includes among the expenditures of the Liwa administration the "cost of construction and maintenance of irrigation works belonging to it (the Liwa), except those undertaken by the State."

6. Law Governing the Rights and Duties of Cultivators No. 28 of 1 July 1933, makes the "farm owner" responsible for aligning watercourses (Art. 3 d); fixing time for watering and manner of distributing the waters among the various sections of the land (Art. 3.g).

7. Land Settlement Law No. 29 of 11 April 1938, as subsequently amended prescribes vide Article 3, paragraph 2, that settlement shall include the "confirmation of rights appurtenant to land such as.....of waterway, of drainage and of drinking and also....." and that such "rights shall be registered (Article 13, paragraph "a") in the names of such interested persons."

8. Law for the Development and Usufruct of State Lands No. 43 in force as from 17.9.1951 prescribes that the Committee set up for the Management of State Lands dis-

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tributed into small plots for purpose of development shall be entrusted with the distribution of water within the project's areas (Article 11, para. 3) and water distribution shall be confined to the lands of the project (Article 11, para. 1).

1) The Use of Water for Irrigation Purposes

Notification No. 226 of the Minister of Communications and Works dated 9 June 1927, issued under the Irrigation Law of 1923, declares all rivers (anhar) and waterways (majari) in Iraq to be "Irrigation Works." This term covers irrigation and flood protection works as well as areas, occupied by or required for the construction or maintenance of such works. The right of undertaking irrigation works on privately owned lands is granted (Art. 3) to the Government, provided the land so required for the works is expropriated according to Law, once the proposed works have been declared to be of public utility. A private owner wishing to carry out works on or through another person's property shall obtain a certificate from the Executive Irrigation Engineer, stating the necessity of such works together with their extent and probable effect on neighboring lands. The applicant remains responsible for the acquisition, lease or arrangement with the interposed owners (Art. 4).

Requests from particulars for constructing any irrigation works are submitted to the mutassarrif of the Liwa concerned. If such requests are not rejected for administrative reasons, they are transmitted to the Executive Irrigation Engineer who may reject them on technical ground or otherwise issue the necessary permit on Irrigation Form No. 44, embodying instructions constituting the specifications of the work for which approval has been granted. The Law does not confer "water rights," but when a permit is issued and implies use of water, it is henceforth recognized that the land to be brought under cultivation shall enjoy the use of water under conditions similar to others within the same district.

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All irrigation works of public importance shall be constructed, repaired and maintained by and remain under the control and supervision of the Irrigation Department, even when such works have been declared to have ceased to be of public importance (Art. 6). The Executive Irrigation Engineer may require the person responsible with the maintenance of watercourses (channels not maintained by the Government, Art. 2, para. 4),